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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Veronica Arnold, on behalf of herself and all other persons similarly situated, et al., Plaintiffs, vs. Arizona Department of Public Safety ("DPS"), et al., Defendants.	No. CV-01-1463-PHX-LOA **ORDER**

This matter arises on Plaintiffs' Motion for Approval of Proposed Settlement and Class Certification to maintain this litigation as a class action.[1/] (docket # 58) On February 8, 2006, the Court conducted a preliminary approval hearing to determine (1) whether to certify the proposed class, and (2) whether to preliminarily approve the proposed Settlement Agreement.

After consideration of the relevant pleadings, the arguments of counsel during the February 8, 2006 preliminary approval hearing, and being fully advised in the case, the Court will certify the proposed class and will preliminarily approve the Settlement Agreement subject to final approval at the fairness hearing to be scheduled at a later date by a separate order.

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[1/] The Class Action Fairness Act of 2005 ("CAFA") does not apply retroactively to this case. Section 9 of CAFA provides that the "amendments made by this Act shall apply to any civil litigation commenced on or after the date of enactment of this Act." 109 Pub.L. 2, 5. CAFA was enacted on February 18, 2005. This case was commenced on August 6, 2001. (docket # 1)

BACKGROUND

On August 6, 2001, eleven[2/] named Plaintiffs brought this action against the Arizona Department of Public Safety ("DPS") and several individual defendants including the Governor of Arizona, the Director of DPS, and several DPS patrol officers. (document # 1) The named Plaintiffs include African-American and Hispanic individuals who were stopped, detained, and searched by DPS officers and drug-detection dogs while traveling on the interstate highways in Coconino County, Arizona. (Id. at 11-12)

Plaintiffs allege that Defendants maintain a policy, pattern, and practice of targeting Hispanic and African-American drivers in conducting traffic stops, detentions, and searches. This practice is commonly referred to as "racial profiling." Plaintiffs define racial profiling "as the reliance on race, skin color, and/or ethnicity as an indication of criminality, reasonable suspicion or probable cause, except when part of a description of a suspect, and said description is timely, reliable and geographically relevant." (Id. at 7) The named Plaintiffs allege that racial profiling allegedly occurred while they were traveling eastbound on interstate highways through Coconino County, Arizona. (document # 1 at 17) Plaintiffs allege that racial profiling stems from a federally funded drug interdiction program sponsored by the United States Drug Enforcement Agency ("DEA") known as "Operation Pipeline." (docket # 1 at 17-18) Plaintiffs assert violations of their constitutional rights under the Fourth and Fourteenth Amendments, 42 U.S.C. § 1983, and Title VI of the Civil Rights Act of 1964, 42 C.F.R. § 42.101, et seq. (docket # 1 at 11) The Complaint seeks declaratory, injunctive, and monetary relief. (docket # 1 at 27-30)

Plaintiffs' suit is based in large part on a statistical study performed by one of Plaintiffs' expert witnesses, Dr. Fred Solop, in connection with ongoing criminal litigation in

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[2/] The Original Complaint includes the following Plaintiffs: Veronica Arnold, Tonya Arrington, Anthony Dorsett, Vince Edwards, Barrington Folkes, Jim Lee, Jesus Sagrero, Raul Salazar, Greg Stephen, Jason Thiel, and Frank Vilas. (docket # 1) However, during the February 8, 2006 hearing, Plaintiffs' counsel informed the Court that Tonya Arrington and Jason Thiel are now deceased. Additionally, Barrington Folkes has been deported and no longer wishes to pursue this litigation. The Court granted Plaintiffs leave to amend the Complaint to reflect these changes, however, they have not yet filed an Amended Complaint. The Court, however, can analyze the pending motion in the absence of the Amended Complaint and the submission of an Amended Complaint which only deletes Plaintiffs Arrington, Thiel, and Folkes will not change the Court's resolution of the pending motion.

Coconino County. Dr. Solop's study is based on documents memorializing traffic stops during 2000 which were produced pursuant to a discovery order by the Coconino Superior Court in the aforementioned criminal litigation. During 2002, it was discovered that DPS had either lost or destroyed certain documents regarding traffic stops and vehicle searches. Based on the absence of the DPS stop and search data, which was critical to Plaintiffs' case, on April 14, 2003, the District Court dismissed Plaintiffs' Complaint with leave to re-file if Plaintiffs discovered additional evidence of racial profiling by DPS. The district court dismissed the action before determining whether to certify a Plaintiffs class.

Plaintiffs appealed. While on appeal, the parties agreed to participate in mediation conducted by Stephen Liacouris of the Ninth Circuit Court of Appeals Mediation Program. Mediation began on September 24, 2003 and continued until the parties reached a settlement of the issues raised in Plaintiffs' complaint in January of 2005. After the parties reached an agreement, they filed a stipulation with the Ninth Circuit to dismiss the pending appeal without prejudice to its reinstatement, so that jurisdiction could be re-vested in the District Court and the matter could be remanded for approval of the settlement. On February 20, 2005, the Ninth Circuit dismissed the appeal without prejudice and remanded this matter for review and approval of the settlement agreement. (docket # 46) On August 15, 2005, the parties consented to magistrate judge jurisdiction. (docket # 61) After conducting a show cause hearing and finding that a magistrate judge has jurisdiction upon the express consent of all parties, the Court now examines the parties' request for an order certifying Plaintiffs' proposed class pursuant to Fed.R.Civ.P. 23(b)(2) and an order approving the Settlement Agreement.

CERTIFICATION OF THE CLASS

I. Requirements for Class Certification

The parties seek certification of a class for settlement purposes pursuant to Fed.R.Civ.P. 23(b)(2). The parties define the class they seek to have certified as follows:

> All non-Caucasian persons who have been or will be stopped, detained and/or searched by an officer or officers of the Arizona Department of Public Safety ("DPS") while traveling in a vehicle on a street or highway within Arizona between January 1, 1997, and the date which is three calendar years after the effective date of the Settlement Agreement filed with the Court on April 12, 2005.

(docket # 58, Exhibit 1 at 4)

The court may certify a class under Rule 23(b)(2) if the proposed class satisfies the prerequisites of Rule 23(a), and the requirement that the "party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making broad injunctive and/or declaratory relief appropriate." Fed.R.Civ.P. 23(b)(2). The Court will address these requirements below.

A. Rule 23(a) Requirements

In order to certify the proposed class for settlement purposes, the Court must first determine whether the proposed class satisfies the four prerequisites set forth in Federal Rule of Civil Procedure 23(a) which are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. Hanlon v. Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998).

1. Numerosity

Rule 23(a)(1) requires that the "class [be] so numerous that joinder of all members is impracticable." Here, the proposed class includes future members – "non-Caucasian persons who have been or will be stopped, detained, and or searched. . . by DPS officers . . . between January 1, 1997 and the date which is three calendar years after the effective date" of the Settlement Agreement. (document # 1 at 4) "[W]here the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and, therefore, the numerosity requirement is met." Osilek v. Commonwealth Utilities Corporation, No. CIVA93-0004, 1993 WL 268635, * 2 (D.N.Mar.I. 1993)(citing International Molders' and Allied Workers' Local Union No. 164 v. Nelson, 102 F.R.D. 457, 461 (N.D.Cal. 1983)); Probe v. State Teachers' Retirement System, 780 F.2d 776, 780 (9th Cir. 1986)(approving a class that included "all male certified employees who were . . . or will be employed in positions entitling them to membership in STRS, and who are currently receiving, eligible to receive, or in the future will receive or may become eligible to receive retirement benefits from STRS.). In view of the inclusion of future members, the joinder of which is impracticable, the Court finds that the proposed class satisfies the numerosity requirement.

2. Commonality

Rule 23(a)(2) requires that "there [be] questions of law or fact common to the class." The Ninth Circuit has held that the commonality requirement is to be construed permissively. "All questions of fact and law need not be common to satisfy the rule. Hanlon, 150 F.3d at 1019. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." Hanlon, 150 F.3d at 1019. The Ninth Circuit has held that "in a civil rights suit, commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." Armstrong v. Davis, 275 F.3d 849, 868 (9th Cir. 2001); Amone v. Aveiro, 226 F.R.D. 677, 684 (D.Haw. 2005)(finding that commonality requirement was met by class of disabled public housing residents seeking declaratory and injunctive relief directing Hawaii public housing defendants to notify disabled public housing tenants of their right to request reduced rents because of their need to expend higher than average amounts on electricity to operate medically necessary equipment.)

Here, the commonality requirement is met because the proposed class alleges a pattern and practice of race-based traffic stops, detention, and searches of non-Caucasian motorists. Specifically, the named Plaintiffs, who are either African-American or Hispanic, were stopped by DPS allegedly for minor traffic violations, detained, and then searched by drug-detection dogs with the alleged consent of the drivers. The proposed class includes non-Caucasians who have been or will be stopped, detained, and searched by DPS officers upon Arizona highways. Thus, there are common facts - non-Caucasian individuals, stopped by DPS, on Arizona highways, detained, and searched - which meet the commonality of Rule 23(a)(2).

3. Typicality

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical claims or defenses of the class." The commonality and typicality requirements tend to merge. Claims are typical if they are reasonably coextensive with those of absent class members; they need not be substantially identical. Hanlon, 150 F.3d at 1020. "Where the challenged conduct is a policy or practice that affects all class members, the underlying

issue presented with respect to typicality is similar to that presented with respect to commonality. . . ." Armstrong, 275 F.3d at 868. In such a case, because the cause of the injury is the same, the typicality inquiry involves comparing the injury asserted by the named Plaintiffs with those of the rest of the class. Id. "Where an action challenges a policy or practice, the named plaintiffs suffering one specific injury from the practice can represent a class suffering other injuries, so long as all the injuries are shown to result from the practice." Thomas v. Baca, No. CV 0408448DDPSHX, 2005 WL 1200268 (C.D.Cal, May 17, 2005)(citing General Tel. Co. of Southwest v. Falcon, 457 U.S. 147, 157-59 (1982)).

In Armstrong, the Ninth Circuit found the typicality requirement satisfied where a group of disabled prisoners and parolees brought a class action against state officials alleging that the policies and practices for parole and revocation proceedings violated the Americans with Disabilities Act and the Rehabilitation Act. Armstrong, 275 F.3d at 868-69. The Ninth Circuit found that despite the differences in the class members' disabilities, the injuries allegedly suffered as a result of the defendants' policies were similar. Id.

Here, the typicality requirement is satisfied. Plaintiffs allege that they were stopped, detained, and/or searched by DPS on Arizona highways pursuant to a pattern and practice of racial profiling. (docket # 1) The alleged constitutional injuries of Plaintiffs and the allege source of those injuries are nearly identical to those of the unnamed class members, therefore, typicality is satisfied.

4. Adequacy of Representation

Rule 23(a)(4) provides that the district court may certify a class only if "the representative parties will fairly and adequately protect the interests of the class." To determine whether the representatives meet this standard, a court considers two issues: (1) whether the representative plaintiffs and their counsel have any conflicts of interest with other class members; and (2) whether the representative plaintiffs and their counsel will vigorously prosecute the action of behalf of the class. Molski v. Gleich, 318 F.3d 937, 955 (9th Cir. 2003); Staton v. Boeing, 327 F.3d 938, 957 (9th Cir. 2003).

"Adequate representation depends on the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive." Crawford v. Honig, 37 F.3d

485,487 (9th Cir. 1995).

There is no known evidence of a direct or indirect conflict between the named Plaintiffs and the unnamed class members nor is there any evidence of collusion. Counsel for Plaintiffs will receive $139,589.78 in attorneys' fees and costs based on a reduced hourly rate for fees incurred up to May 13, 2004. (docket # 59 at 15-16) Plaintiffs' numerous counsel have agreed to forego payment for legal services after that date if the Settlement Agreement is approved. (Id.) In view of the reduced fees and the significant amount of time expended by multiple Plaintiffs' counsel before and after this case was returned to the District Court, it is clear that Plaintiffs' counsel are not pursuing this matter for their personal financial gain. Additionally, the named Plaintiffs and their counsel have vigorously prosecuted this matter since, at least, August 2001 when the lawsuit was filed over four years ago. They have participated in mediation nearly two years after the lawsuit was dismissed in an effort to resolve this matter favorably for their named clients and the proposed class and will certainly continue this litigation if the Settlement Agreement is not approved.

Based on the foregoing, the Court finds that the proposed class satisfies the Rule 23(a) requirements. Although it would prefer that the parties' settlement agreement enlarge the proposed class to prohibit racial profiling against all persons, not just all non-Caucasians, the Court is not free to rewrite the terms of the proposed settlement. Instead, "the proposed settlement must stand or fall as a whole." Holden v. Burlington N., Inc., 665 F. Supp. 1398, 1406 (D. Minn. 1987); Officers for Justice v. Civil Service Com'n, Etc., 688 F.2d 615, 625 (9th Cir.1982), cert. denied, 459 U.S. 1217 (1983). While a district court may make suggestions for modification of proposed settlement's terms (and this Court did so at the preliminary approval hearing), it cannot unilaterally change them. Officers for Justice, 688 F.2d at 630. The Court's role is properly limited to the minimum necessary to protect the interests of the class and the public. Armstrong v. Board of School Directors, Etc., 616 F.2d 305, 312, 315 (7th Cir.1980).

In light of the fact that racial minorities are the overwhelming majority of the victims of racial profiling and the terms of the proposed settlement significantly enhances the protections afforded to those most vulnerable to the unlawful discriminatory practice of

racial profiling, the Court, therefore, will next consider whether the Rule 23(b)(2) requirements are met.

B. Rule 23(b)(2) Requirements

Under Fed.R.Civ.P. 23(b)(2), class certification is appropriate when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole." Id. Class certification under Rule 23(b)(2) is only appropriate where the primary relief sought is declaratory or injunctive. Molski, 318 F.3d at 950-51.

Although Rule 23(b)(2) certification is inappropriate where the primary relief sought is monetary, a class seeking monetary damages that are incidental to the primary claim for injunctive relief may be properly certified under Rule 23(b)(2). Id. In determining whether the primary relief sought is monetary or injunctive, a district court should focus on the intent of the parties and the language of Rule 23(b)(2). Molski, 318 F.3d at 950.

Here, the predominant relief sought in the Complaint is injunctive. The primary purpose of the suit is to prohibit DPS from stopping, searching, and detaining motorists based on racial profiling. Pursuant to the Settlement Agreement, the named Plaintiffs agree to release or waive their own monetary damages, if any. However, the Settlement Agreement specifies that the damage claims of the unnamed class members are preserved. Because the primary relief sought in the Complaint is injunctive, certification under Rule 23(b)(2) is appropriate. Connor v. Cisneros, 37 F.3d 775, 796 (2d Cir. 1994) (stating that cases alleging a pattern of racial discrimination against state and local officials are the "paradigm" of Rule 23(b)(2) cases.)

C. Conclusion

After review of the entire record in this matter, including the arguments of counsel at the February 8, 2006 preliminary approval hearing, the Court finds that the proposed class satisfies the requirements for certification under Fed.R.Civ.P. 23(b)(2) and 23(a).

PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT

The pending motion also requests the Court approve the parties' Settlement Agreement.

Federal courts look with favor on the voluntary resolution of litigation through settlement. Armstrong v. Board of School Directors, Etc., 616 F.2d 305, 312 (7th Cir.1980); Parker v. Anderson, 667 F.2d 1204, 1209 (5th Cir.), cert. denied, 459 U.S. 828 (1982). At the February 8, 2006 preliminary approval hearing, the Court heard arguments and questioned the lawyers to determine whether the Court should approve the settlement before conducting a full "fairness hearing." In re Jiffy Lube Sec. Litig., 927 F.2d 155, 158 (4th Cir. 1991). The parties submitted briefs and supporting documents to the Court along with the proposed Settlement Agreement. After examination of those materials and as discussed below, the Court determines that the proposed Settlement Agreement appears fair on its face and is worthy of submission to the class members for their consideration, support and/or possible criticism. Managing Class Action Litigation, Barbara J. Rothstein & Thomas E. Willging (2005), at 17. Therefore, the Court will preliminarily approve the Settlement Agreement

I. Summary of Terms of Proposed Settlement Agreement

In summary, the Settlement Agreement contains terms which: (1) prohibit DPS from engaging in racial profiling and racial discrimination in conducting traffic stops and investigation; (2) limit the length of traffic stops; (3) require written consent to conduct a search of a vehicle; (4) require DPS to adopt procedures for videotaping traffic stops; (5) require DPS to train its officers regarding the terms of the Settlement Agreement; (6) permit Plaintiffs' counsel to request meetings with DPS to monitor the implementation of the Settlement Agreement; (7) require the Governor to create a Citizens Traffic Stop Advisory Board to review DPS practices regarding traffic stops; (8) provide that the named Plaintiffs release their claims for monetary damages but that the unnamed Plaintiffs may seek such damages; (9) provide that DPS will pay $139,589.78 to as attorneys' fees and costs to Plaintiffs' counsel. (Exhibit to document # 58)

II. Legal Standard

In the context of a class action, "the extraordinary amount of judicial and private resources consumed by massive class action litigation elevates the general policy of encouraging settlements to 'an overriding public interest.'" Austin v. Pennsylvania Department of Corrections, 876 F.Supp. 1437, 1455 (E.D.Pa. 1995)(quoting Cotton v. Hinton 559 F.2d 1326, 1331 (5th Cir. 1977)). Due to their representative nature, class actions are susceptible to abuse by named plaintiffs or their counsel. Id. To protect against improper conduct, Federal Rule of Civil Procedure 23(e) provides that "[a] class action shall not be dismissed or compromised without the approval of the court . . . ." Id. Rule 23(e) does not contain a standard by which a proposed settlement is to be evaluated. However, the "universally applied standard is whether the settlement is fundamentally fair, adequate and reasonable." Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992) (citations omitted). The district court must consider the settlement as a whole, rather than individual provisions, for overall fairness. Staton v. Boeing Company, 327 F.3d 938, 952 (9th Cir. 2003)(citing Hanlon v. Chrysler Corp., 150 F.3d 1011, 1026 (9th Cir. 1998)).

In determining whether a settlement agreement is fair, adequate and reasonable, a court may consider the following factors:

> the strength of the plaintiff's case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action throughout trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Molski v. Gleich, 318 F.3d 937 (9th Cir. 2003)(quoting Linney v. Cellular Alaska Partnership, 151 F.3d 1234, 1242 (9th Cir. 1998)). The court, however, need not only consider those factors which are relevant to the case before it "[b]ecause the settlement evaluation factors are non-exclusive." Churchill Village, L.L.C. v, General Electric, 361 F.3d 566, 576 n. 7 (9th Cir. 2004). When, such as in this case, the district court is presented with a request for a settlement-only class certification, the court must also consider factors designed to protect absent class members. Molski, 318 F.3d at 953 (citing Amchem Products, Inc. v. Windsor, 521 U.S. 591, 620 (1997)). A court must consider the relevant factors but need not "reach any ultimate conclusions on the contested issues of law and fact

which underlie the merits of the dispute, for it is the very uncertainty of the outcome of litigation and avoidance of wasteful and expensive litigation that induced consensual settlements." Officers for Justice, 688 F.2d at 625.

The Court will consider several of the foregoing factors in determining whether to preliminarily approve the Settlement Agreement.

First, this matter has been litigated since 2001 and the parties have engaged in extensive discovery. The parties advise the Court that they have reviewed thousands of traffic stops and vehicle searches conducted by DPS in 1999-2002 and over 500,000 stops conducted by DPS in 2003. This matter was on appeal and in mediation from 2003 until January of 2005. The procedural posture of this case supports approving the settlement agreement. The parties have spent a significant amount of time considering the issues and facts in this case and are in a position to determine whether settlement is a viable alternative. Counsel for both Plaintiffs and Defendants have sufficient skills and experience to litigate this class action and evaluate the propriety of the Settlement Agreement. (docket # 68)

Additionally, pursuant to the terms of the Settlement Agreement, Defendants offer Plaintiffs a great amount including attorneys' fees and the commitment of resources to implement the terms of the Agreement. Specifically, Defendants agree to pay $139,589.78 in attorneys' fees to Plaintiffs' counsel. Although the Settlement Agreement does not award monetary damages to named Plaintiffs, implementing the terms of the Settlement Agreement will require an ongoing commitment of Defendants' resources the expenditure of which will benefit the entire Plaintiffs class. Pursuant to the Settlement Agreement, Defendants agree to dedicate finances and labor to equipping DPS vehicles with videotaping equipment, collecting data regarding traffic stops and converting that data to an automated format to make available to Plaintiffs at no cost, training DPS officers regarding the terms of the Settlement Agreement, and creating a Citizens Advisory Board. Implementing these terms will require an ongoing dedication of human and financial resources. The benefits of these expenditures will inure to the named Plaintiffs and the entire Plaintiffs' class.

Another factor that supports preliminary approval of the Settlement Agreement is the expense of continued litigation. During the February 8, 2006 hearing, the parties advised the Court that if the Settlement Agreement is not approved, they will continue

litigating this matter before the Ninth Circuit. If the matter were reversed at the appellate level and remanded, the parties agree that the litigation would involve numerous depositions, additional discovery, dispositive motions and possibly a trial. In view of the number of named Plaintiffs, the enormous size of the proposed class, the significant cost of continued litigation and the inordinate delay that has already been incurred and may be incurred to reach a trial on the merits, Rule 1's mandate compels preliminary approval of the Settlement Agreement. Fed. R. Civ. P. 1 (rules of procedure "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.").

Another factor to consider in evaluating the proposed Settlement Agreement is the strength of the Plaintiffs' case. An issue related to the strength of Plaintiffs' case is whether their claims satisfy Article III's case or controversy requirement. Standing, as an Article III requirement, has three requirements: (1) plaintiffs suffered an "injury in fact"; (2) there is a causal connection between the injury and the challenged conduct; and (3) there is a likelihood that the injury will be "redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Where injunctive relief is sought, the redressability prong requires "a sufficient likelihood that [plaintiffs] will again be wronged in a similar way[.]" City of Los Angeles v. Lyons, 461 U.S. 95, 111, 103 (1983).

Although the Complaint sought injunctive and declaratory relief, Plaintiffs have abandoned these specific requests for relief and now seek approval of the Settlement Agreement which does not require the Court to award injunctive or declaratory relief or require this federal court to monitor DPS' ongoing operations for compliance with the Settlement Agreement. The Supreme Court has cautioned that, "absent a threat of immediate and irreparable harm, the federal courts should not enjoin a state to conduct its business in a particular way." Hodgers-Durgin v. De La Vina, 199 F.3d 1037, 1042 (9th Cir. 1999)(citing O'Shea v. Littleton, 414 U.S. 488 (1974); Rizzo v. Goode, 423 U.S. 362 (1976); Lewis v. Casey, 518 U.S. 343 (1996). Plaintiffs claim that they need not establish the degree of likelihood of future injury than if Plaintiffs were requesting injunctive or declaratory relief. Unlike the Hodgers-Durgin case where the Ninth Circuit found the claim

for declaratory relief unripe because the plaintiffs' failed to establish a likelihood of future injury, the numerous affidavits submitted to the Court by most of the named Plaintiffs for the February 8th hearing establish a colorable claim of likelihood of future racial profiling while traveling upon Arizona's highways. Hodgers-Durgin, 199 F.3d at 1044. Defendants, however, agree that, for purposes of settlement only, Plaintiffs have sufficient standing and need not establish the degree of likelihood of future injury because no injunctive or declaratory relief will be granted as a result of the Settlement Agreement. Nevertheless, because standing is a jurisdictional issue, the court must address standing, where questionable, even if the parties do not raise it. Juidice v. Vail, 430 U.S. 327, 331 (1977).

The Court's independent research has not revealed a single case addressing the precise situation before the Court - whether Plaintiffs who sought injunctive relief in their Complaint must satisfy the stringent standing requirements for seeking injunctive relief when the parties have agreed to settle their claims and the terms of the settlement do not provide for injunctive relief, declaratory relief or ongoing federal court monitoring of a state agency's operations for compliance with the Settlement Agreement. There is, however, language in the Supreme Court's decision in Lyons that supports the argument that the Plaintiffs' withdrawal of their request for injunctive relief, along with the Plaintiffs' other claims, may be sufficient to give them standing for purposes of a settlement. 461 U.S. at 105.

The Ninth Circuit has held that plaintiffs seeking prospective injunctive relief can establish that the threatened injury is sufficiently likely to occur by (1) demonstrating that defendant had a written policy and that the injury is traceable to that policy; or (2) by demonstrating that the harm alleged is part of a '"pattern of officially sanctioned . . . behavior violative of the plaintiffs' [federal] rights.'" Armstrong, 275 F.3d at 861(quoting LaDuke v. Nelson, 762 F.2d 1318, 1323 (9th Cir. 1985)).

In this case, Plaintiffs allege that they suffered injuries as a result of DPS's pattern or practice of racial profiling. The Court, however, need not determine whether DPS has, in fact, engaged in such a pattern and practice because the parties have agreed to settle their claims. In assessing the adequacy and fairness of a settlement agreement in the context of a class action, the district court need not resolve factual or legal issues that may have

previously been disputed. Officers For Justice, 688 F.2d at 625. Because the parties have agreed to settle their claims and the Settlement Agreement does not require the Court to award injunctive or declaratory relief, the Court need not determine whether Plaintiffs have standing to seek injunctive or declaratory relief. However, in view of the allegations that Defendants have maintained a pattern and practice of racial profiling combined with affidavits in which several named Plaintiffs have submitted that indicate a likelihood of future travel on Arizona highways (docket # 73), the Court finds that Plaintiffs likely satisfy the standing requirements specific to seeking injunctive relief.

III. Conclusion

After conducting a preliminary review of the terms of the proposed Settlement Agreement, the Court finds that it is fair on its face and will preliminarily approve the agreement. The Court will again consider the proposed Settlement Agreement during the final fairness hearing at which time the Court will determine whether to finally approve the Settlement Agreement.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Approval of Proposed Settlement and Class Certification (docket # 58) **GRANTED** in part and **DENIED** in part.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Class Certification is **GRANTED** and that the following class is certified pursuant to Fed.R.Civ.P. 23(b)(2) for purposes of settling all claims for relief in Plaintiffs' Complaint:

> All non-Caucasian persons who have been or will be stopped, detained and/or searched by an officer or officers of the Arizona Department of Public Safety ("DPS") while traveling in a vehicle on a street or highway within Arizona between January 1, 1997, and the date which is three calendar years after the effective date of the Settlement Agreement filed with the Court on April 12, 2005.

(docket # 58, Exh. 1)

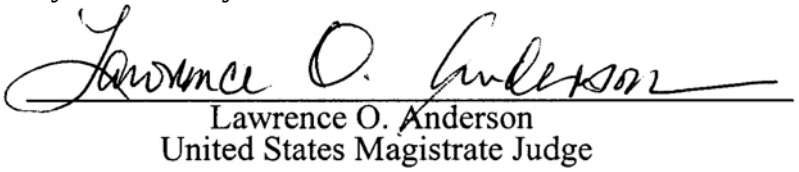
IT IS FURTHER ORDERED that Lee B. Phillips, Daniel J. Pochoda, and Reginald T. Shuford are appointed as class counsel pursuant to Fed.R.Civ.P. 23(g).

IT IS FURTHER ORDERED that Plaintiffs' Motion for Approval of Proposed Settlement (docket # 58) is **DENIED** without prejudice but that the proposed Settlement Agreement is preliminarily approved and subject to further consideration after

the Court conducts a final fairness hearing in this matter which will be scheduled at a later date in a separate order.

IT IS FURTHER ORDERED that Plaintiffs are hereby granted leave to amend and shall file a First Amended Complaint by **March 15, 2006** deleting the deceased and disinterested Plaintiffs who no longer wish to be named members of the class. Except for the correct case number and as all counsel may stipulate and agree, the First Amended Complaint shall contain no other substantive changes from the August 6, 2001 Complaint.

DATED this 24th day of February, 2006.



Lawrence O. Anderson
United States Magistrate Judge